

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 96-0381 ST
GROSS RETAIL TAX
For Years 1991, 1992, AND 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Retail Tax – Manufacturing exemption.

Authority: 45 IAC 2.2-5-8(d); IC 6-2.5-5-3(b); Indianapolis Fruit Co. vs. Dept. of State Revenue, 691 N.E.2d 1379 (Ind. Tax 1998); General Motors Corp., 578 N.E.2d 399 (Ind. Tax 1991), aff'd, 599 N.E.2d 588 (Ind. 1992).

Whether purchase of equipment used to package products for their protection from breakage or damage during transportation to customers is for the direct use in the direct production of the product and is thus exempt from the Indiana retail sales tax.

STATEMENT OF FACTS

The taxpayer purchased manufacturing equipment from "A" to package their finished product-individual packages of chips. This equipment is used to package multiple individual bags in a box, thus preventing excessive breakage that otherwise would occur during shipping. If the chips are not protected in some fashion, the finished good does not remain marketable. Taxpayer was assessed a tax for this purchase based on the Indiana retail sales tax, and contends the assessment was improper based on the exemption outlined in Indiana Regulation, Rule 45 IAC 2.2-5-8(d), stating the exemption extends to "...the point that the production has altered the item to its completed form, including packaging, if required."

DISCUSSION

In defining an item as production related, and therefore exempt, the double direct test is used. The test, drawn from IC 6-2.5-5-3(b), requires the item in question be for the “direct use in the direct production” of the tangible property.

As discussed in Indianapolis Fruit Co. vs. Dept. of State Revenue, 691 N.E.2d 1379 at 1386; “Putting something in a package may be an integral and essential part of an integrated production process.” See, e.g., General Motors Corp., 578 N.E.2d 399 at 404 affirmed 599 N.E.2d 588; IAC 45 2.2-5-8(d)(1). “This however, does not lead to the conclusion that, in and of itself, packaging constitutes production. In this case, the packaging has not changed the ‘form, composition, or character’ of the tomatoes.” The packaging in both cases is done to the completed product for its transportation to a retailer. This case goes on to additionally note that since Indianapolis Fruit (unlike taxpayer) did no production prior to the packaging of the tomatoes the packaging could not be part of a production process and was not exempt on these grounds as well.

In General Motors Corp., 578 N.E.2d at 404; “An integrated production process terminates upon the production of the most marketable finished product, e.g., the product actually marketed. Consequently, GM’s manufacture of finished marketable automobiles is accomplished by one continuous integrated production process within which the transport of parts from component plants to assembly plants is an essential and integral part.” Transportation costs are not normally part of the production exemption, and in this case the court permits only the transport costs incurred prior to the production of the product actually marketed. Packaging for transport is not normally part of the production process, and applying the courts reasoning, would only be exempt if it occurred during the production process.

The rule cited by taxpayer, Indiana Regulation, 45 IAC 2.2-5-8 (d) indicates the exemption only extends to “... the point that the production has altered the item to its completed form....” As taxpayer states in its appeal, “The finished good does not remain marketable if not shipped in boxes packaged by the equipment.” The good is finished and marketable, the additional packaging is properly considered part of the transportation of a finished good, thus the cost of the equipment used to package it is not exempt from the Indiana retail sales tax.

FINDINGS

Taxpayer’s protest is denied.